



# Washington State House of Representatives Workgroup on the Prevention of Sexual Harassment

## Independent Resource Recommendations

### Introduction

To maintain a respectful and professional workplace environment and enforce the expectations described in the Code of Conduct, the Workgroup recommends the establishment of an independent resource (IR) Office.

The creation of an IR Office is not intended to replace any existing process or circumvent any channels of communication already in existence between individuals and their supervisors, the Chief Clerk's office, caucus leadership, or any other entity that receives and hears complaints and allegations. Contacting the IR Office is not a prerequisite to using any existing formal or informal process.

The intent of creating an IR Office is to establish an independent entity with specific authority free from political influence. In this context, the term "independent" means that: (1) a member of the legislative community may file a complaint with the IR Office or contact the IR Office directly without having to first go through a supervisor or the Chief Clerk's office; and (2) the IR Office has authority to investigate or take other information gathering or non-disciplinary action using his or her discretion, without needing to seek input or permission and without fear of repercussion from the Chief Clerk's office or House leadership or any member. An IR Office will provide members of the legislative community with more choices, empower victims of harassment, discrimination, and misconduct to seek assistance and resolution, increase accountability and transparency, and help create an environment that reflects the dignity of the institution.

The Workgroup recognizes that legislation is needed to fully implement the IR Office as recommended. Until legislation is enacted, the Workgroup recommends the House, through the Advisory Board: (1) contract with a third party that has experience in carrying out the duties described for the consultative branch of the IR Office, or if a contract is not possible, hire an individual to fulfill those duties; and (2) have on retainer a contracted outside individual or entity that individuals may contact directly to file formal complaints and that will conduct independent investigations. The contracts with outside individuals or entities, which would remain in place until the enactment of legislation to implement the IR Office, should be structured to incorporate the features and implement the intention of the IR Office proposal described in this document, to the extent feasible.

The IR Office will be established by July 1, 2019, pending the passage of legislation to establish the IR Office in accordance with this document.

### Powers and Duties

The IR Office has two distinct and separate functions: (1) an investigative branch to investigate complaints and make recommendations; and (2) a consultative branch to provide support, guidance, advice, and assistance.

For the IR Office to conduct both functions with integrity, there must be a sufficient firewall between the two branches of the IR Office. Protective firewall measures include, at a minimum: (1) having at least two individuals employed with

the IR Office, each operating independently within the separate branches of the IR Office; (2) physically locating the two branches separately from each other; and (3) having clear policies regarding each branch's confidentiality and the duty to report or disclose information.

**1. Investigative Branch: Investigate complaints and recommend disciplinary action**

**a. Formal complaints**

- i. Any member of the legislative community, as defined in the Code of Conduct, may file a complaint with the IR Office when the person believes that another member of the legislative community has violated the Code of Conduct or the House's Respectful Workplace Policy. The IR Office will respond to complaints that are under the jurisdiction of the IR Office.
- ii. The IR Office does not have jurisdiction to investigate complaints that do not involve a member of the legislative community, do not involve persons engaging in the business of the House, either on or off the Capital Campus, or that do not allege violations of the House's Code of Conduct or Respectful Workplace Policy. When the matter is outside the jurisdiction of the IR Office, the IR Office will refer the complainant to the appropriate resource, such as the Legislative Ethics Board, the Chief Clerk's office, the Public Disclosure Commission, staff directors of workgroups, or law enforcement. The IR Office will conduct an investigation only when a formal complaint is filed.
- iii. The IR Office must develop policies and procedures to address how complaints will be investigated and to address how the status and outcomes of investigations will be communicated to the Chief Clerk's office and others in the House of Representatives.

**b. Informal complaints, allegations and information sharing**

- i. When a complaint or allegation is known to the House, the House should share that information with the IR Office's consultative branch and investigative branch, with the consent of the person bringing the complaint or making the allegation. If it is a formal complaint, the IR Office and the House should follow the IR Office's policy regarding how the complaint will be investigated, including whether the IR Office or the House or both will conduct an investigation.

**c. Investigations**

- i. If the person filing the formal complaint is the victim of the alleged violation, the complainant may request that the IR Office initiate an investigation.
- ii. If the person filing the formal complaint is not the victim of the alleged violation, the IR Office may contact the victim, if appropriate, to determine whether the victim wants to take any further action such as filing a formal complaint, requesting guidance, advice, or assistance, or taking other action.
- iii. The IR Office will determine whether a complaint warrants an investigation and the level of investigation that is needed.
- iv. The IR Office may initiate an investigation on its own, without consent of the victim or complainant, when appropriate (for example, if the conduct is so egregious that failure to investigate has the likelihood of putting others at risk).
- v. Determinations of whether complaints warrant investigation or other responses will be made by the IR Office without input or influence from House leadership, administration, or the IR Board.
- vi. The IR Office may conduct its own investigations or may contract with a third party to conduct investigations, when appropriate and at the discretion of the IR Office.

**d. Findings, sanctions and disciplinary action**

- i. If the IR Office finds that a complaint is substantiated, the IR Office may recommend sanctions or other disciplinary action.
- ii. The House retains the right to conduct additional investigations after the conclusion of an IR Office's investigation of a complaint. Pending completion of any investigation, the IR Office

may recommend interim injunctive relief to appropriate entities. If an investigation involves a member of the House of Representatives, the IR Office must, at a minimum, inform House leadership and the supervisors of the House workgroups that an investigation has been initiated against the member.

- iii. If the IR Office finds that a complaint is substantiated, the IR Office must send a summary of findings and recommendations for sanctions and/or disciplinary action to the appropriate entity that has authority to implement the recommendations (for example, the Chief Clerk's office and the appropriate caucuses when the violator is a member of the House; staff directors when the violator is staff; and the Public Disclosure Commission, Chief Clerk's office, and staff directors when the violator is a lobbyist).

## 2. **Consultative Branch: Guidance, advice, and assistance**

- a. Any individual of the legislative community may contact the IR Office's consultative branch to discuss situations, and seek advice, guidance, assistance, or other intervention. When a person brings forth information or allegations to the IR Office without filing a formal complaint the IR Office's consultative branch has discretion to take informal action. Informal action includes contacting the subject of the allegation or conducting other interventions that do not rise to the level of an investigation. The IR Office's consultative branch should take into consideration the preferences of the individual prior to taking any informal action.
- b. The IR Office provides options on how to proceed, including options that do not rise to the level of filing a formal complaint or requesting an investigation.
- c. The IR Office offers coaching to individuals, outlines possibilities and options for further action, and assists individuals in navigating possible next steps.
- d. The IR Office provides informal advice on inquiries and may discuss with individuals whether or not particular fact situations might constitute a violation of the Code of Conduct or the House's Respectful Workplace Policy.
- e. The IR Office may act as a mediator between individuals to help resolve situations or help facilitate difficult conversations when an impacted person chooses to address the behavior directly with the alleged violator.
- f. The IR Office staff receiving informal complaints, allegations, and information will make reasonable attempts to ensure confidentiality, subject to the individual's consent or other provisions requiring disclosure.
- g. For the purposes of improving the process, the IR Office should track how it deals with receiving and handling of informal complaints and report to the IR Board the IR Office's best practices and recommendations on dealing with such situations.
- h. A person who wants to report an incident but who might not necessarily want to file a formal complaint or initiate an investigation should be able to contact the IR Office to provide the IR Office with information. Allowing for an informal process that does not rise to the level of filing a formal complaint and investigation allows the IR Office to identify patterns of behavior if there are multiple allegations against the same individual.
- i. The IR Office's consultative branch may contact a person who reports an incident but does not file a formal complaint to alert the person of new information or changed circumstances to allow said person to reconsider whether or not to file a formal complaint or to consent to having the consultative branch disclose confidential information to other parties, including the House. During an initial meeting where a person is speaking confidentially to the IR Office's consultative branch, said person should be informed of this policy of future contact.
- j. The IR Office's consultative branch lead is a member of the Training Advisory Committee that provides input and oversight of trainings.

- k. The IR Office's consultative branch provides administrative support to the Training Advisory Committee to coordinate trainings.
- l. Where appropriate, and where the investigative and advocacy roles of the IR Office will not be in conflict, the IR Office may conduct trainings and coordinate trainings offered by other agencies or organizations.
- m. The IR Office may develop and distribute educational materials.

## Structure and governance

To ensure the IR Office is insulated from political influence as much as possible, the Workgroup recommends the creation of an IR Board to hire and oversee the IR Office.

### 1. Hiring, oversight, and accountability

#### a. Independent Resource Board

- i. An IR Board is created for hiring, overseeing, and if necessary, terminating the employees of the IR Office. The Board is composed of ten members:
  - Two members of the House of Representatives, one from each of the two largest caucuses;
  - Two members representing staff from each of the two largest caucuses;
  - Two members representing staff of the Office of Program Research;
  - One member representing House administration;
  - Two members representing Legislative Assistants from each of the two largest caucuses; and
  - One non-voting member representing lobbyists.
- ii. Selection of members:
  - 1. The body being represented shall determine how their representative member is selected.
  - 2. Members shall serve two-year terms.
- iii. Administrative and coordinating support for the IR Board must be provided by the Chief Clerk's Office.
- iv. Decisions of the IR Board should be made by consensus. If consensus cannot be reached, decisions require agreement by at least six voting members of the IR Board.
- v. The IR Board may not provide input into whether the IR Office initiates investigations or the IR Office's recommendations for sanctions or disciplinary action before the investigation is complete. The IR Board may provide input on the IR Office's recommendations once the IR Office's investigation is complete and the IR Office submits a final report.
- vi. The IR Office submits periodic reports back to the IR Board regarding the IR Office's activities.
- vii. The IR Board may conduct surveys and use other methods for monitoring the IR Office's effectiveness.
- viii. If the House of Representatives has hired an employee to perform the duties of the consultative branch prior to the enactment of legislation to establish the IR Office, that employee will transfer to the IR Office consultative branch upon the IR Office's creation.

### 2. Funding

- a. A new legislative agency is created with its own appropriation. Financial services can be managed by the Department of Enterprise Service's small agency client services or other arrangement.

## Confidentiality and Disclosure of Records

### 1. Confidentiality and Disclosure

- a. The investigative branch of the IR Office and the consultative branch of the IR Office have different responsibilities regarding disclosure of information. When an individual seeks assistance from the consultative branch, the IR Office will not disclose information received from the individual without the individual's consent.
- b. The reporting obligations of the IR Office's investigative branch upon the filing of a complaint must be designed in such a way so as to: (a) maximize the confidentiality of the complainant and any witnesses; (b) provide appropriate protections for the larger legislative community in light of the allegations, where necessary; while (c) appropriately considering minimization of exposure to liability for the House of Representatives. The IR Office may acknowledge that a complaint has been filed upon this fact being publicized by a complainant.
- c. The IR Office must balance the need for confidentiality and protection of complainants with protecting other employees and the public's right to know.
- d. Full un-redacted reports are only available to the IR Office and the Chief Clerk's Office and are not disclosable unless otherwise provided by law or there is unanimous consent from all victims who are the subjects of the report.
- e. At a minimum, after the conclusion of an investigation of a substantiated complaint, a high-level summary and recommendations of the IR Office will be made public after all identifying information of complainants, victims, and witnesses is redacted. At the conclusion of an investigation in which a complaint has not been substantiated, the IR Office should provide a high-level summary of the complaint to the Chief Clerk's office with identifying information of the complainant, victims, and witnesses redacted.
- f. Un-redacted reports may be disclosed with the consent of the victim, unless there is more than one victim identified in the report. Un-redacted reports involving more than one victim may be disclosed only upon unanimous consent of the victims identified in the report.
- g. The person seeking the disclosure of confidential information has the burden of showing why it is the public's interest for such information to be disclosed.